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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

THANH TRAN,

Defendant and Appellant.

C085440

(Super. Ct. No. 15F06076)

Defendant Thanh Tran appeals a judgment entered after a jury found him guilty of voluntary manslaughter (Pen. Code, § 192, subd. (a))¹ and being a felon in possession of a firearm (§ 29800, subd. (a)(1)). Defendant argues insufficient evidence supports the jury's conclusion his acts were the proximate cause of the victim's death. The victim, who was not otherwise involved in the shooting, was killed by a single stray-bullet

¹ Undesignated statutory references are to the Penal Code.

wound to the head while inside his apartment. Defendant points out that the evidence was not conclusive regarding who fired the fatal shot. We affirm.

I. BACKGROUND

The first consolidated felony complaint charged three people with the murder of the victim (§ 187, subd. (a)—count one): defendant, Minh Sidney Dinh and Thoung Hicks.² The complaint further alleged, in pertinent part, that in reference to count one, defendant and Hicks used and intentionally discharged a nine-millimeter handgun proximately causing the death of the victim, who was not an accomplice (§ 12022.53, subds. (b)-(d)). The complaint also charged Dinh with the attempted murder of defendant (§§ 664/187—count two) and charged defendant with being a felon in possession of a firearm (§ 29800, subd. (a)(1)—count three). After a preliminary hearing, defendant, Dinh and Hicks were held to answer, and the consolidated complaint was filed as the information. Defendant pleaded not guilty.

Defendant, Dinh and Hicks were tried together before two juries.³ What follows is a description of testimony relevant to defendant's complaint on appeal.

A. The Assault on Steven

About a week before the shooting resulting in the victim's death, a handgun belonging to Dinh went missing under circumstances suggesting that Steven may have taken it. A few days later, Steven was confronted about the theft, which he denied. Dinh and associates beat Steven with a pool stick, despite this denial. Steven testified to Dinh pulling a gun on him during the attack. Afterwards, Hicks took Steven to the hospital.

² Defendant and Hicks are cousins.

³ The second jury was necessitated by the People's use of Hicks's incriminating statements to authorities against him.

B. The Restaurant Confrontation

The day before the shooting, Dinh and a group of friends went to a Sacramento restaurant where one of the men in the group saw Hicks's girlfriend sitting outside and said "hi." While ordering their food, Dinh and Hicks exchanged looks in a stare down. The Hicks group left, and Dinh's group followed them, eventually driving past Hicks's house, where they exchanged looks again. Both groups returned to the restaurant,⁴ and Hicks demanded to know why the Dinh group went to Hicks's house.⁵ Hicks challenged the opposing group to a fight, and Dinh pulled a handgun out from his waistband, cocked it, and pointed it at the Hicks group. The owner intervened, and the groups separated peacefully.

C. The Shooting

The next day, August 31, 2015, Hicks and defendant went to Dinh's associate's home (Bryan) to ascertain why Dinh's group had driven by Hicks's house the previous night. The occupants of the home refused to open the door and eventually Hicks and defendant left. Bryan called Dinh for help because he had started the problem. The occupants then left the apartment and spoke with a neighbor, R.L. Thereafter, Dinh arrived.

Sometime later, defendant and Hicks returned. According to Bryan's testimony, defendant and Hicks came aggressively towards him, and Hicks demanded to know why

⁴ According to Steven, after the initial confrontation, Hicks picked him up and brought him to the restaurant so that they could "talk it out." This is consistent with Hicks's brother's recollection that they were attempting to diffuse the problem with Dinh. Steven denied plotting with Hicks to get revenge.

⁵ Hicks's concern was likely heightened because his brother and his wife both told him that Dinh had armed himself with a gun prior to leaving the restaurant.

the opposing group drove by Hicks's home the day before.⁶ Bryan saw defendant reach into his waistband and pull out a pistol: In response, Dinh exited his car and fired a warning shot into the ground with a rifle. Bryan ran and heard "a lot" of shooting coming from different guns.

Anthony, Bryan's roommate, testified that after Dinh arrived, he got out of his car with a black bag that contained a gun.⁷ Dinh showed them the gun and then went to repark his car. Anthony saw Hicks ask Bryan why they had driven past his house; Bryan then pointed to Dinh. Dinh pointed his gun at Hicks and then fired a warning shot into the ground. Anthony heard Hicks ask, "are we supposed to be scared?" Dinh then shot defendant, who dropped to the ground.⁸ Before defendant went down, Anthony saw defendant fidget with this hand, but he did not pull out a gun. This was contrary to his previous statement to police that defendant "pulled out his piece and [Dinh] shot him" Anthony later clarified that defendant's reaching movement and the shooting of defendant were simultaneous. While Anthony fled the scene, he heard shots from two different firearms. He did not see Hicks with a gun.

R.L. testified that he saw a white man in a camouflage hat arguing with Bryan. The white man's companion, a man in a black shirt, was standing by the door of the white man's car. R.L. heard someone yell "gun" and saw the man in the black shirt, with his arm outstretched, holding what looked like a pistol in a firing position. He saw the man in the black shirt firing in the direction of Bryan and Anthony. R.L. heard a couple

⁶ Bryan testified under a grant of immunity.

⁷ Anthony testified under a grant of immunity.

⁸ This sequence of events is consistent with the testimony of L.L., another visitor in Bryan's apartment on the day of the shooting, except that L.L. thought Dinh fired two or three warning shots in sequence between statements. L.L. could not see if defendant drew a gun because his view of defendant's body was blocked by a car.

dozen gun shots during the incident, starting with softer shots and then with louder ones coming once he had retreated inside his apartment. He never saw the person shooting the louder gun. R.L. also did not see the white man with a gun, nor did he see anyone with a rifle. R.L. admitted lying to authorities about whether Bryan and Anthony had been involved, but professed telling the truth on the stand.

Hicks brought defendant to the hospital, where he was bloody and nonresponsive.

The parties stipulated that the victim was in his bedroom in his apartment near the parking lot where the shooting confrontation had occurred. Family members heard booms from outside the apartment and a loud boom that came from the victim's bedroom; the victim's family rushed to the bedroom and discovered the victim lying on the floor bleeding from his head. An officer who responded to the scene testified that there was a recent bullet hole in the victim's bedroom window and shards of glass on the floor.

An autopsy established the victim died from a gunshot wound to the head. The parties stipulated that the bullet removed from the victim's head was either a damaged nine-millimeter or a .38-caliber bullet, and the bullet's weight and style "were indicative of those commonly associated with nine-millimeter Parabellum (Luger) ammunition." Both nine-millimeter and .223-caliber shell casings were recovered from the scene.

Defendant elected not to testify and presented no witnesses in his defense.

The jury found defendant not guilty of second degree murder in count one, but guilty of the lesser included offense of voluntary manslaughter (§ 192, subd. (a)) and determined that defendant did not use a firearm within the meaning of section 12022.5 in the commission of this offense. The jury also found defendant guilty of being a felon in possession of a firearm as alleged in count three (§ 29800, subd. (a)(1)). The trial court sentenced defendant to the upper term of 11 years for voluntary manslaughter and stayed his two year sentence on the firearm possession count pursuant to section 654.

II. DISCUSSION

Defendant argues his conviction for voluntary manslaughter “must be reversed because there is insufficient evidence to support the jury’s finding that his acts were a proximate cause of the victim’s death.” Specifically, he argues his bringing a gun to the shootout was not a substantial factor in the victim’s death. The People respond that sufficient evidence supports the jury’s verdict because the jury could have reasonably determined that defendant either drew or attempted to draw his gun, causing Dinh to shoot him, and then Hicks picked up that gun and returned fire, leading to further shooting and the death of the victim. We are unconvinced by either of these arguments. The People’s argument fails because the record before the relevant jury does not contain evidence that Hicks picked up, much less shot defendant’s gun. Nonetheless, defendant’s argument fails because a jury could have reasonably concluded that defendant shot his gun before he was gunned down by Dinh, such that there is evidence that defendant was at least a proximate cause of the victim’s death.

A. *The Standard of Review*

“ ‘In reviewing a challenge to the sufficiency of the evidence, we do not determine the facts ourselves. Rather, we “examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” [Citations.] We presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] [¶] The same standard of review applies to cases in which the prosecution relies primarily on circumstantial evidence and to special circumstance allegations. [Citation.] “[I]f the circumstances reasonably justify the jury’s findings, the judgment may not be reversed simply because the circumstances might also reasonably be reconciled with a contrary finding.” [Citation.] We do not reweigh evidence or reevaluate a witness’s credibility.’ [Citations.] ‘Resolution of conflicts and

inconsistencies in the testimony is the exclusive province of the trier of fact. [Citation.] Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction.’ [Citations.]” (*People v. Brown* (2014) 59 Cal.4th 86, 105-106.) A jury is entitled to reject some portions of a witness’s testimony while accepting others. (*People v. Davis* (1957) 48 Cal.2d 241, 248.)

B. Proximate Causation

As explained by this court in *People v. Schmies* (1996) 44 Cal.App.4th 38, 48-49: “[I]n homicide cases, a ‘cause of the [death of the decedent] is an act or omission that sets in motion a chain of events that produces as a direct, natural and probable consequence of the act or omission the [death] and without which the [death] would not occur.’ [Citations.] In general, ‘[p]roximate cause is clearly established where the act is directly connected with the resulting injury, with no intervening force operating. [Citation.] . . . [A] ‘[d]efendant may also be criminally liable for a result directly caused by his act, even though there is another contributing cause.’ [Citation.] [¶] Intervening causes in criminal cases are typically described as either ‘dependent’ or ‘independent.’ A dependent intervening cause will not absolve a defendant of criminal liability while an independent intervening cause breaks the chain of causation and does absolve the defendant. [Citation.] ‘An intervening cause may be a normal or involuntary result of the defendant’s original act. Such a cause is said to be “dependent,” and does not supersede; i.e., the defendant is liable just as in the direct causation case.’ [Citation.] An ‘independent’ intervening ‘act may be so disconnected and unforeseeable as to be a superseding cause; i.e., in such a case the defendant’s act will be a remote, and not the proximate, cause.’ [Citation.]” (Fn. omitted.)

As noted by the California Supreme Court in *People v. Sanchez* (2001) 26 Cal.4th 834, 846, “it has long been recognized that there may be multiple proximate causes of a homicide, even where there is only one known actual or direct cause of death.” Thus, “[t]he circumstance that it cannot be determined who fired the single fatal bullet, i.e., that

direct or actual causation cannot be established, does not undermine defendant's . . . murder conviction if it was shown beyond a reasonable doubt that defendant's conduct was a substantial concurrent cause of [the victim's] death." (*Id.* at p. 845.) Multiple individuals engaged in the same gun battle resulting in the death of a victim from a single bullet may be legally responsible for that victim's death. (*Ibid.* [court of appeal erred in determining concurrent causation could not apply to single fatal bullet case of two defendants convicted of premeditated murder].)

Here, we find substantial evidence supports the jury's implied proximate cause determination. Specifically, we find the jury could have reasonably determined that defendant's action of firing his pistol during the gunfight which resulted in the victim's death was a proximate cause of that death.

We find nothing physically impossible or improbable about R.L.'s testimony that he saw the man in the black shirt fire his pistol at the inception of the gunfight in the direction of Dinh's companions, Bryan and Anthony. We also find, given the other testimony describing the shooting, that the jury could have reasonably determined that the man in the black shirt was defendant. Further, given that only nine-millimeter and .223-caliber shell casings were recovered, and the only person identified as having a pistol was the defendant, the jury could have reasonably inferred that defendant was at least the proximate, if not the actual, cause of the victim's death.⁹ Accordingly, substantial evidence supports the jury's verdict.

⁹ We recognize that given defendant's injury at the hands of Dinh and that the shooting continued thereafter, it is possible that another person actually killed the victim. However, this does not impact the propriety of defendant's conviction where he proximately caused that death. (*People v. Sanchez, supra*, 26 Cal.4th at pp. 845-846; see also *id.* at p. 857 (con. opn. of Kennard, J.) [distinguishing individuals firing at each other causing the death of a third party from a death caused in a subsequent gunfight occurring at a different time and place than the original shooting]; *People v. Cervantes* (2001)

That the jury rejected the special allegation that defendant used a firearm during the commission of the offense does not alter this result. “It is well settled that, as a general rule, inherently inconsistent verdicts are allowed to stand.” (*People v. Lewis* (2001) 25 Cal.4th 610, 656.) “An inconsistency may show no more than jury lenity, compromise, or mistake, none of which undermines the validity of a verdict. [Citations.]” (*Ibid.*) This rule is equally applicable to inconsistencies between firearm enhancements and their corresponding crimes. (See, e.g., *People v. Lopez* (1982) 131 Cal.App.3d 565, 569-572 [inconsistent verdict on shooting victim and use of gun enhancement did not require reversal of shooting conviction for insufficiency of evidence where substantial evidence supported that conviction].)

III. DISPOSITION

The judgment is affirmed.

/S/

RENNER, J.

We concur:

/S/

ROBIE, Acting P. J.

/S/

MURRAY, J.

26 Cal.4th 860, 872-873 [insufficient evidence of proximate causation where “actual murderers were not responding to defendant’s provocative act by shooting back”].)